

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Case No. 19-cr-313 (ECT/TNL)

Plaintiff,

v.

ORDER

Santos Gomez Perez,

Defendant.

This matter is before the Court on Defendant Santos Gomez Perez's Motion for Extension of Time to File Defendant's Pretrial Motions and Continue Motion Hearing. (ECF No. 44.) Defendant has also filed a Statement of Facts in Support of Exclusion of Time Under the Speedy Trial Act. (ECF No. 45.) Current defense counsel was appointed to this case on December 8, 2021. (ECF No. 43.) Thus, defense counsel and Defendant need additional time to communicate and review discovery. (ECF No. 44 at 1; *see also* ECF No. 45 at 1.) Defendant requests an extension of the motion filing deadline to December 24, 2021, and a two-week extension of the motion hearing date. (ECF No. 44 at 1.) By way of separate correspondence with the Court, the Government has stated it does not object to Defendant's motion.

Additionally, beginning on March 13, 2020, and continuing thereafter, the Honorable John R. Tunheim, Chief District Judge for the United States District Court for the District of Minnesota, has issued a series of General Orders in connection with the

COVID-19 pandemic, addressing, among other things, criminal proceedings and trials.¹ On December 6, 2021, Chief Judge Tunheim entered General Order No. 32, which allows limited in-person proceedings for defendants who decline to consent to conducting the proceeding using videoconferencing, or telephone conferencing if videoconferencing is not reasonably available. *See generally In re: Updated Guidance to Court Operations Under the Exigent Circumstances Created by COVID-19*, Gen. Order No. 32 (D. Minn. Dec. 6, 2021). General Order No. 32 states that because only limited in-person proceedings may be held each day, criminal proceedings may be continued until the date that the criminal proceeding takes place.

General Order No. 32 continues to encourage the use of videoconferencing in criminal proceedings and states that, with the defendant's consent, criminal proceedings will be conducted by videoconferencing, or telephone conferencing if videoconferencing is not reasonably available.² General Order No. 32 further provides that the presiding judge will enter orders in individual cases to extend deadlines and exclude time under the Speedy Trial Act to address delays attributable to COVID-19. **Accordingly, should Defendant file pretrial motions, counsel shall also file a letter indicating whether Defendant consents to a motions hearing by videoconference. (See also ECF No. 21; ECF No. 31 at 3; ECF No. 39 at 3.)**

¹ All General Orders related to the COVID-19 pandemic may be found on the Court's website at <https://www.mnd.uscourts.gov/coronavirus-covid-19-guidance>.

² *See also* General Order No. 33, which went into effect on December 21, 2021, vacated General Order No. 31, and extended the Court's authorization to conduct certain criminal proceedings via video or telephone conference pursuant to the CARES Act “[b]ecause the emergency created by the COVID-19 outbreak continues to materially affect the functioning of court operations in the District of Minnesota.” *In re: Updated Guidance to Court Operations Under the Exigent Circumstances Created by COVID-19*, Gen. Order No. 33 (D. Minn. Dec. 17, 2021).

Pursuant to 18 U.S.C. § 3161(h), this Court finds that the ends of justice served by granting a continuance outweigh the best interests of the public and Defendant in a speedy trial and such continuance is necessary to provide Defendant and his counsel reasonable time necessary for effective preparation and to make efficient use of the parties' resources. Based on all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Defendant's Motion for Extension of Time to File Defendant's Pretrial Motions and Continue Motion Hearing. (ECF No. 44) is **GRANTED**.
2. The period of time from **December 9, 2021 through February 3, 2022**, shall be excluded from Speedy Trial Act computations in this case.
3. All motions in the above-entitled case shall be filed and served consistent with Federal Rules of Criminal Procedure 12(b) and 47 on or before **December 24, 2021**.³ D. Minn. LR 12.1(c)(1). Two courtesy copies of all motions and responses shall be delivered directly to the chambers of Magistrate Judge Tony N. Leung.⁴
4. **Counsel shall also file a letter on or before December 24, 2021, indicating whether Defendant consents to a motions hearing by videoconference.**
5. **Counsel shall electronically file a letter on or before December 24, 2021, if no motions will be filed and there is no need for a hearing.**
6. All responses to motions shall be filed by **January 7, 2022**. D. Minn. LR 12.1(c)(2).

³ "Before filing a motion under Fed. R. Crim. P. 12(b), the moving party must confer with the responding party. The parties must attempt in good faith to clarify and narrow the issues in dispute." D. Minn. LR 12.1(b).

⁴ U.S. Mail or hand-deliver to 300 South Fourth Street, Suite 9W, Minneapolis, MN 55415.

7. Any Notice of Intent to Call Witnesses⁵ shall be filed by **January 7, 2022**.

D. Minn. LR 12.1(c)(3)(A).

8. Any Responsive Notice of Intent to Call Witnesses⁶ shall be filed by **January 10, 2022**. D. Minn. LR 12.1(c)(3)(B).

9. A motions hearing will be held pursuant to Federal Rules of Criminal Procedure 12(c) where:

- a. The Government makes timely disclosures and a defendant pleads particularized matters for which an evidentiary hearing is necessary; or
- b. Oral argument is requested by either party in its motion, objection or response pleadings.

10. If required and subject to further order of the Court, the motions hearing shall be heard before Magistrate Judge Tony N. Leung on **February 3, 2022**, at **10:00 a.m.**, in **Courtroom 9W**, Diana E. Murphy U.S. Courthouse, 300 South Fourth Street, **MINNEAPOLIS**, Minnesota 55415. D. Minn. LR 12.1(d).

11. **TRIAL:**

a. **IF NO PRETRIAL MOTIONS ARE FILED, the following trial and trial-related dates are:**

Counsel should submit two hard copies of trial briefs, voir dire, proposed jury

⁵ “When a party intends to call witnesses at a hearing on a motion under Fed. R. Crim P. 12(b), the party must file a notice within 35 days after the arraignment. The notice must identify the number of witnesses whom the party intends to call, the motion or motions that each witness will be addressing, and the estimated duration of each witness’s testimony.” D. Minn. LR 12.1(c)(3)(A).

⁶ “If after reviewing a notice under LR 12(c)(3), a party intends to call witnesses at the same hearing, that party must file a responsive notice within 38 days after the arraignment. The responsive party must identify the number of witnesses whom the party intends to call, the motion or motions each witness will be addressing, and the estimated duration of each witness’s testimony.” D. Minn. LR 12.1(c)(3)(B).

instructions, exhibit and witness lists, and trial-related motions (including motions in limine) to District Judge Eric C. Tostrud's chambers on or before **January 24, 2022**. In addition, counsel should email the proposed jury instructions and witness lists to: tostrud_chambers@mnd.uscourts.gov.

Judge Tostrud will hold a final pretrial conference on **February 4, 2022 at 9:00 a.m.** in Courtroom 3B, Warren E. Burger Federal Building and U.S. Courthouse, 316 North Robert Street, **SAINT PAUL**, Minnesota.

This case must commence trial on **February 7, 2022 at 1:00 p.m.** before District Judge Tostrud in Courtroom 3B, Warren E. Burger Federal Building and U.S. Courthouse, 316 North Robert Street, **SAINT PAUL**, Minnesota.

b. **IF PRETRIAL MOTIONS ARE FILED, the trial date, and other related dates, will be rescheduled following the ruling on pretrial motions. Counsel must contact the Courtroom Deputy for District Judge Tostrud to confirm the new trial date.**

Dated: December 22, 2021

s/Tony N. Leung
TONY N. LEUNG
United States Magistrate Judge
District of Minnesota

United States v. Gomez Perez
Case No. 19-cr-313 (ECT/TNL)